

81 MAR 2000



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Catherine Polizzi  
Morrison & Foerster  
755 Page Mill Road  
Palo Alto, California 94304-1018

In re Application of	:	
LITTLE, Andrew S., et al.	:	
U.S. Application No.: 09/509,591	:	
PCT No.: PCT/US98/04084	:	
International Filing Date: 03 March 1998	:	DECISION ON
Priority Date: 03 March 1997	:	PETITION FOR FILING
Attorney's Docket No.: 348022000420	:	DATE UNDER 37 CFR
For: ADENOVIRUS VECTORS SPECIFIC FOR	:	1.10(e)
CELLS EXPRESSING ALPHA-FETOPROTEIN	:	
AND METHODS OF USE THEREOF	:	

This decision is issued in response to applicants' "Petition For A Filing Date Under 37 CFR 1.10(e)" filed on 07 March 2000. No petition fee is required.

### **BACKGROUND**

On 03 March 1998, applicants filed international application PCT/US98/04084 which claimed a priority date of 03 March 1997 and which designated the United States.

On 02 October 1998, a Demand was filed with the International Preliminary Examining Authority electing the United States. Because this Demand was filed prior to the expiration of 19 months from the priority date. As a result, the deadline for submission of a copy of the international application (unless previously communicated by the International Bureau) and payment of the basic national fee was extended to expire 30 months from the priority date, i.e., 03 September 1999.

On 03 September 1999, applicants allege that they filed via "Express Mail" a transmittal letter for entry into the national stage in the United States accompanied by: (1) an unsigned declaration of inventors; and (2) a preliminary amendment. The transmittal letter noted that a copy of the international application was not required because the application was filed in the United States Receiving Office. The transmittal letter also authorized a charge to Deposit Account No. 03-1952 for any required fees.

On 07 March 2000, applicants filed the "Petition For A Filing Date Under 37 CFR 1.10(e)" considered herein.

### DISCUSSION

#### **A. Petition Under 37 CFR 1.10(e)**

37 CFR 1.10(e) states:

(e) Any person mailing correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS, but not received by the Office, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";

(3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and

(4) The petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence, and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence and original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS. Such statement must be a verified statement if made by a person other than a practitioner as defined in § 10.1(r) of this chapter.

Regarding item (1) above, the Petition states that applicants initiated communication with the United States Patent and Trademark Office ("USPTO") regarding receipt of this application on 20 October 1999, less than two months after the alleged filing. The Petition also states that such communications continued up until the filing of the present Petition. Under these circumstances, it is concluded that applicants acted promptly in filing the Petition. Item (1) above is satisfied.

Regarding item (2), the transmittal letter and the preliminary amendment both contain the Express Mail Label No. EL034669783US. Item (2) above is satisfied.

As for item (3), the Petition states that copies of all the documents deposited with the USPS Express Mail service on 03 September 1999 are attached to the Petition. As noted above, these documents set forth Express Mail Label No. EL034669783US. Attached to the Petition is a copy of the Express Mail receipt bearing this same label number and a "Date In" of 03 September 1999. Thus, item (3) above is satisfied.

Finally, the statements contained in the Petition, and the attachments thereto, are sufficient to satisfy item (4) above. Accordingly, all of the required elements of a grantable petition under 37 CFR 1.10(e) have been met. It is therefore concluded that the materials attached to the present Petition were filed with the USPTO on 03 September 1999.

## **B. Fee Issues**

Applicants have submitted a \$130 petition fee with this present Petition. A petition fee is not required. Accordingly, Deposit Account No. 03-1952 will be refunded this amount.

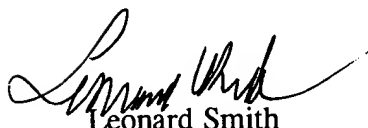
With respect to the basic national fee, the transmittal letter filed on 03 September 1999 authorizes a charge to Deposit Account No. 03-1952 for required fees. The fee calculation column on page two of the transmittal letter contains a mathematical error; it also assumes small entity status, although no small entity statement has been submitted, and applies the wrong basic national fee. Accordingly, the fee calculation contained in the transmittal letter will not be applied here.

A review of the file shows that the appropriate fee here is \$1,132. This total consists of: \$840 for the basic national fee, \$130 as the fee for filing the declaration of inventors, and \$162 as the fee for including 29 total claims. Deposit Account No. 03-1952 has been charged this amount.

CONCLUSION

The Petition For A Filing Date Under 37 CFR 1.10(e) is **GRANTED**. The documents attached to the Petition are accepted as having been filed on 03 September 1999.

A national stage file has been created for this application with United States application number 09/509,591. The International Bureau documents for this application have been placed in this file, and the file is being forwarded to the National Stage Processing Branch of the International Division for further processing in accord with this decision, including the issuance of a Notification Of Missing Requirements (Form PCT/DO/EO/905) requiring submission of an executed oath or declaration of the inventors.



Leonard Smith  
PCT Legal Examiner  
PCT Legal Office

RMR/LS:rmr



Richard M. Ross  
PCT Petitions Attorney  
PCT Legal Office

Telephone: (703) 308-6155

Facsimile: (703) 308-6459